

**In re: J.R. SIMPLOT COMPANY.
PVPA Docket No. 02-0001.
Order as to Commissioner's Answer.
Filed July 19, 2002.**

Robert Ertman, for Commissioner.

Richard C. Peet, for Petitioner.

Ruling issued by William G. Jenson, Judicial Officer.

J.R. Simplot Company [hereinafter Petitioner] instituted this appeal of a decision by Paul M. Zankowski, Commissioner, Plant Variety Protection Office, Science and Technology Programs, Agricultural Marketing Service, United States Department of Agriculture [hereinafter Commissioner], by filing "Petition Under 7 C.F.R. § 97.300 For Recording PVP Application No. 9600256 in the Name of J. R. Simplot Company" [hereinafter Petition] with the Secretary of Agriculture on June 28, 2002. Petitioner instituted the proceeding under the Plant Variety Protection Act, as amended (7 U.S.C. §§ 2321-2583) [hereinafter the PVPA]; and the regulations promulgated pursuant to the PVPA (7 C.F.R. pt. 97) [hereinafter the Regulations].

Section 97.301(a) of the Regulations provides the Commissioner may furnish a written statement to the Secretary of Agriculture in answer to the Petition, as follows:

§ 97.301 Commissioner's answer.

(a) The Commissioner may, within such time as may be directed by the Secretary, furnish a written statement to the Secretary in answer to the appellant's petition, including such explanation of the reasons for the action as may be necessary and supplying a copy to the appellant.

7 C.F.R. § 97.301(a).

Pursuant to section 97.301(a) of the Regulations (7 C.F.R. § 97.301(a)), the Commissioner shall have 20 days from the date of service of this Order on the

attorney for the Commissioner¹ to furnish a written statement to the Judicial Officer² in answer to the Petition.

¹The record before me establishes that, for the purposes of this proceeding, Robert A. Ertman, Office of the General Counsel, United States Department of Agriculture, is the attorney for the Commissioner.

²Effective December 1, 1977, the Secretary of Agriculture delegated to the Judicial Officer, United States Department of Agriculture, the authority to exercise the functions of the Secretary of Agriculture where an appeal is filed under section 63 of the PVPA (7 U.S.C. § 2443) (42 Fed. Reg. 61,029-30 (Dec. 1, 1977)).